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Protection and promotion of all human rights, civil, political, economic, social and cultural rights, including the right to development

Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 35/20, in which the Council requested the Office of the United Nations High Commissioner for Human Rights to undertake research on human rights protection gaps in the context of cross-border movement resulting from the adverse effects of climate change and the necessary means of implementation for climate change adaptation and mitigation to bridge them, and to submit a report on that research to the Council at its thirty-eighth session. It concludes with several concrete recommendations for addressing those issues.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 35/20, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to undertake research on addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the sudden-onset and slow-onset adverse effects of climate change and the necessary means of implementation of adaptation and mitigation plans of developing countries to bridge the protection gaps, and to submit a report on that research to the Council at its thirty-eighth session.

2. In that resolution, the Council also called for an intersessional panel discussion, with the theme "Human rights, climate change, migrants and persons displaced across international borders". That discussion took place on 6 October 2017, and a summary report of the discussion was submitted to the Council.[1]

3. Throughout 2017, OHCHR, in collaboration with the Platform on Disaster Displacement, undertook research on the slow-onset adverse effects of climate change and human rights protection for cross-border migrants. OHCHR held an expert meeting on the subject on 5 October 2017 and submitted a conference room paper to the Council at its thirty-seventh session.[2]

4. To further inform its research, OHCHR transmitted a note verbale and questionnaire to all Member States requesting their inputs. Additional requests for inputs were sent to international organizations, national human rights institutions and civil society.[3]

5. The panel discussion, written inputs, consultations and independent research informed the present report, which examines the impacts of climate change on human mobility,[4] human rights protection gaps for those crossing international borders in response to the adverse effects of climate change, and the relevant human rights obligations of States. The report shares illustrative good practices and concludes with recommendations for fulfilling human rights obligations in the context of climate change-related cross-border human mobility.

II. Impacts of climate change on human mobility and related human rights risks

6. Climate change is an increasingly important driver of human mobility. The Internal Displacement Monitoring Centre estimates that, on average, 21.7 million people were internally displaced each year in the period 2008–2016 by weather-related disasters.[5] Similar global data is not available on cross-border displacement, but the two forms of displacement are linked and internal displacement figures can help to illustrate the potential

[1] A/HRC/37/35.

[2] See www.ohchr.org/Documents/Issues/ClimateChange/SlowOnset/A_HRC_37_CRP_4.pdf.

[3] For information about the Council panel discussion, the expert meeting, the note verbale, the questionnaire and inputs received, see www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeAndMigration.aspx (stakeholder inputs are referenced here as "name" input).

[4] There is no universal legal definition or agreed terminology that describes people who move in the context of climate change. For the present report, such movement is referred to broadly as "human mobility" or "movement". The term "displacement" is used to describe movements that are predominately forced, while "migration" is used to describe movement that is not predominately forced but nonetheless may not be entirely voluntary. Where reference is made to people with specific legal entitlements under international law, such as refugees, this is indicated. The term "migrant" refers to any person outside a State of which they are a citizen or national or, in the case of a stateless person, their State of birth or habitual residence.

[5] See Internal Displacement Monitoring Centre, "Global Report on Internal Displacement" (Geneva, 2017), p. 3. Available at www.internal-displacement.org/global-report/grid2017/pdfs/2017-GRID.pdf.

scope of climate change-related displacement.[6] Notably, the above figure does not account for those who moved in whole or in part owing to the slow-onset adverse effects of climate change, such as sea level rise, salinization of groundwater resources, changing precipitation patterns and desertification. The actual number of persons whose decisions to move were affected by climate change is likely to be higher. In its *Fifth Assessment Report*,[7] the Intergovernmental Panel on Climate Change found that climate change would increase future levels of displacement and that populations lacking the resources for planned migration experienced higher exposure to extreme weather events, in particular in developing countries with low incomes.

7. As the Human Rights Council mentions in its resolution 35/20, the adverse effects of climate change have a range of implications for the effective enjoyment of human rights, including the rights to life, food, health, housing, self-determination, water and sanitation, and development. The negative impacts of climate change on health and children have been the subject of two previous reports to the Council by OHCHR.[8] Those impacts can drive human mobility, and when people move out of necessity rather than free choice, they may face a heightened risk of human rights violations.[9]

A. Relationship between climate change and human mobility

8. The relationship between climate change and human mobility is complex. According to the New York Declaration for Refugees and Migrants, people may move to escape armed conflict, poverty, food insecurity, persecution, terrorism, human rights violations and abuses, the adverse effects of climate change, natural disasters (some of which may be linked to climate change), other environmental factors and for a combination of those reasons.

9. Given that, establishing clear causality between the adverse effects of climate change and human movement can be difficult. Decisions to move, even when the adverse effects of climate change are the predominant driver, can be compounded by violations of economic, social, cultural, civil and political rights, some of which may themselves be caused or exacerbated by climate change. According to the Intergovernmental Panel on Climate Change, by amplifying well-documented drivers of conflict, such as poverty and economic shocks, climate change can also indirectly increase the risk of violent conflict.[10] Those complexities pose substantial challenges for quantitative research and can inhibit understanding of the climate change/human mobility nexus, as well as the potential effects of climate change mitigation and adaptation on human mobility.

10. Nevertheless, it is clear that climate change substantially contributes to human rights harms and related human movement.[11] The adverse effects of climate change have a range of implications for the effective enjoyment of human rights. For example, in 2008, it was estimated that roughly half of the world's hungry people relied on degraded lands that will suffer largely negative effects from climate change for their subsistence.[12] It is also estimated that climate change will have a major impact on the people living without access

[6] It is important to note that the majority of climate change-related movement, at least at first, is likely to be internal. See F. Gemenne, "Migration doesn't have to be a failure to adapt" in *Climate Adaptation Futures* (John Wiley & Sons, 2013), p. 238; and K. Warner and T. Afifi, "Enhancing Adaptation Options and Managing Human Mobility: The United Nations Framework Convention on Climate Change", *Social Research: An International Quarterly*, vol. 81, No. 2 (2014) p. 307.

[7] Available at www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_FINAL_full_wcover.pdf.

[8] A/HRC/32/23 and A/HRC/35/13.

[9] See A/HRC/37/34, paras 12–14.

[10] See *Fifth Assessment Report* (footnote 7 above).

[11] Some international human rights mechanisms have recognized that climate change-related disasters threaten the enjoyment of human rights and are a push factor in women's migration. See, for example, Committee for the Elimination of Discrimination against Women general recommendation No. 37 (2018) on gender-related dimensions of disaster risk reduction in the context of climate change, para. 74.

[12] See A/HRC/7/5, para. 51.

to an adequate water supply.[13] When people lack access to food, water and other necessities, in order to survive, they may attempt to move internally or across borders. The failure of Governments to undertake effective climate change mitigation and adaptation can be an additional push factor for mobility and can exacerbate the situation of the most vulnerable persons who are unable to move. Sometimes, mitigation and adaptation measures themselves can adversely affect the enjoyment of human rights and drive human movement.[14] For instance, some hydroelectric and biofuel projects have resulted in forced evictions, and the planned relocation of those exposed to the adverse effects of climate change involves high risks of human rights harms.

11. As OHCHR confirmed in its study on the slow-onset effects of climate change and human rights protection for cross-border migrants, including its regional case studies on South Asia, the Sahel, the Pacific islands and Central America, climate change-related cross-border movement is most likely to involve movements between developing countries.[15] The study makes the qualitative case that climate change can drive cross-border movement. It describes, for example, how cross-border movement serves a critical adaptive function for those facing drought and desertification in the Sahel[16] and is also an adaptive response in Pacific island States endangered by rising sea levels and the increasing frequency and intensity of extreme weather events.[17]

12. Available data on cross-border movement related to natural disasters further reveals the potential scope of such climate change-related movement, highlighting the need for improved data collection. For example, in 2011, the Office of the United Nations High Commissioner for Refugees (UNHCR) estimated that, 290,000 Somalis would flee across the border into neighbouring countries, mainly to Ethiopia and Kenya, while more than 1.3 million were estimated to have been internally displaced; such movements could be connected to drought, famine, ongoing conflict, insecurity and human rights violations.[18] Similarly, in 2009, after Cyclone Aila, it was reported that thousands of Bangladeshis had moved to India.[19] Those examples illustrate that the adverse effects of climate change may contribute, along with other factors, to both internal and cross-border movement, which threatens the enjoyment of human rights.

B. Human rights risks posed by climate change-related human mobility

13. As the Human Rights Council stated in its resolution 35/20, the adverse effects of climate change are felt most acutely by those segments of the population that are already in vulnerable situations owing to factors such as geography, poverty, gender, age, indigenous or minority status, national or social origin, birth or other status and disability. Climate change poses an existential threat to inhabitants of small island-states and low-lying coastal countries, to millions of people facing hunger in Africa, and to countless others who have contributed so little to its causes, yet find themselves at risk.[20] For example, according to

[13] See A/HRC/10/61, para. 29.

[14] See www.ohchr.org/Documents/Issues/ClimateChange/SlowOnset/A_HRC_37_CRP_4.pdf.

[15] See B. Mayer, "The International Legal Challenges of Climate-Induced Migration: Proposal for an International Legal Framework", in *Columbia Journal of International Environmental Law and Policy*, vol. 22, No. 3 p. 397 (2011); and German Advisory Council on Climate Change, *Climate Change as a Security Risk* (Berlin, 2008), p. 118.

[16] See www.ohchr.org/Documents/Issues/ClimateChange/SlowOnset/A_HRC_37_CRP_4.pdf; and World Bank, *Turn Down the Heat: Confronting the New Climate Normal* (Washington, D.C., 2014), p. 144.

[17] See www.ohchr.org/Documents/Issues/ClimateChange/SlowOnset/A_HRC_37_CRP_4.pdf; and Nansen Initiative, "Human Mobility, Natural Disasters and Climate Change in the Pacific" (2013).

[18] See UNHCR Global Report on Somalia (2011). Available at www.unhcr.org/publications/fundraising/4fc880a70/unhcr-global-report-2011-somalia.html.

[19] See Nansen Initiative, "Climate Change, Disasters, and Human Mobility in South Asia and Indian Ocean" (2015), p. 14.

[20] According to one 2015 estimate, roughly 95 per cent of internal displacement over the previous several years had occurred in developing countries. See Internal Displacement Monitoring Centre, "Global Estimates 2015: People displaced by disasters" (Geneva, 2015), p. 9. Available at

the United Nations Children's Fund (UNICEF), the more than 500 million children living in areas with high flood occurrence and 160 million in high drought zones are exceptionally vulnerable.[21]

14. Vulnerability implies less adaptive capacity and can be both "situational" and "personal".[22] It can result from multiple and intersecting forms of discrimination, inequality and structural and societal dynamics that lead to diminished and unequal levels of power and enjoyment of rights.[23] The negative impacts of climate change can reduce adaptive capacity and affect a person's ability to move, the freedom with which they choose to do so, and their vulnerability before, during and after migration. Vulnerability may occur throughout migration and regardless of whether or not movement was "voluntary". It can be enhanced by restrictive migration and border control policies.

15. Although climate change poses unique threats, the risks faced by persons moving because of climate change are similar to those faced by all migrants in vulnerable situations who are unable to have access to safe, affordable and regular migration pathways. They may experience difficulty in exercising their rights throughout the entire migration process and be denied entry through punitive border control regimes. Migration can expose migrants to difficult working conditions and subject them to exploitation, marginalization and human rights violations, in particular if they are in irregular situations. Importantly, some of those most affected by climate change may also be trapped in place and unable to access migration pathways at all.[24]

16. In general, climate change-related cross-border migrants are likely to experience difficulty in gaining access to basic necessities, such as food, water, adequate health care and housing. Other factors — such as reduced access to health-care facilities, goods and services, loss of social safety networks, threats to the economic and social determinants of health, increased exposure to disease vectors and stigmatization and discrimination — also have a negative impact on the physical and mental health of persons moving in response to climate change.

17. Persons moving in response to climate change can be made more vulnerable through increasing barriers to international migration, including its criminalization, migration policies based on deterrence, border restrictions, restrictions on migrants' access to labour markets and a lack of safe, accessible and regular migration pathways for work, education, family unity and humanitarian needs.

18. When persons adversely affected by climate change cross international borders in an irregular manner, they may face expulsion, xenophobia, discrimination, social exclusion and/or persecution, including heightened threats of arbitrary detention, sexual exploitation, human trafficking, violent attack, rape and torture.[25]

19. The human rights risks posed by human mobility can be particularly severe for those disproportionately affected by climate change. For example, the displacement of indigenous peoples and the potential loss of their traditional lands, territories and resources threaten their cultural survival, traditional livelihoods and right to self-determination. Displacement, even as an adaptation strategy or in the context of planned relocation, can prove an existential threat to the enjoyment of their rights and their existence as peoples.

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www.internal-displacement.org/assets/library/Media/201507-globalEstimates-2015/20150713-global-estimates-2015-en-v1.pdf.

[21] See UNICEF, *Unless we act now: The impact of climate change on children* (New York, 2015). Available at www.unicef.org/publications/files/Unless_we_act_now_The_impact_of_climate_change_on_children.pdf.

[22] See A/HRC/37/34, paras. 13–15. See also UNHCR, "Migrants in vulnerable situations" (2017), available at www.refworld.org/pdfid/596787174.pdf.

[23] See A/HRC/37/34, para. 13.

[24] The International Organization for Migration (IOM) refers to such situations as "forced immobility". See also D. Ionesco, D. Mokhnacheva and F. Gemenne, *The Atlas of Environmental Migration* (Routledge, 2017), p. 2.

[25] See A/HRC/37/35, para. 7.

20. Likewise, children who migrate or whose parents migrate due to climate change may be separated from their cultural heritage and face difficulties accessing schools, adequate health care and other necessities.[26] Refugee and other migrant children that miss educational opportunities and/or are left behind by caregivers may suffer long-term socioeconomic impacts, neglect, abuse and exploitation.[27]

21. Climate change-related migration can also exacerbate pre-existing inequalities and intensify gender-specific dimensions of discrimination and poverty.[28] According to the Committee for the Elimination of Discrimination Against Women, in its general recommendation No. 37 (2018) on gender-related dimensions of disaster risk reduction in the context of climate change, women migrants face a heightened risk of gender-based violence, including human trafficking and other forms of discrimination. They may also face specific human rights violations owing to a lack of adequate sexual, reproductive and mental health services, as well as discrimination in accessing employment, social security, education, housing, legal documents and justice. Women who migrate may also be vulnerable to climate change impacts in destination areas. Furthermore, gender-based stereotypes, household responsibilities, discriminatory laws, lack of economic resources and limited access to social capital frequently restrict the ability of women to migrate.

22. Those disproportionately affected by climate change — including migrants — are not inherently vulnerable and do not necessarily lack resilience or agency. They should not be treated as victims. On the contrary, they must be recognized as agents, actors and leaders in addressing climate change and its impacts including those related to human mobility. In the Sendai Framework for Disaster Risk Reduction 2015–2030, for example, it is recognized that migrants contribute to the resilience of communities and societies, and their knowledge, skills and capacities can be useful in the design and implementation of disaster risk reduction. Empowering migrants affected by climate change to contribute to and benefit from climate change mitigation and adaptation efforts will require closing human rights protection gaps and ensuring their access to information, decision-making processes and justice.

III. Closing human rights protection gaps for climate change-related cross-border movement

23. The human rights protection gaps for persons crossing borders in response to climate change result from, inter alia, legal and policy gaps, including failure to implement human rights obligations, inadequate understanding of the linkages between human rights, climate change and human mobility, and insufficient means of implementation to support climate change mitigation and adaptation, including safe, orderly and regular migration.

A. International law and policy frameworks that specifically address human mobility and/or climate change

1. Refugee law

24. Although people on the move in climate contexts may experience similar hardships as refugees, the definition of refugee under the Convention relating to the Status of Refugees excludes the majority of people who cross international borders because of climate change.[29] The Convention defines a refugee as a person outside their country of nationality or habitual residence that cannot return owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social

[26] See A/HRC/35/13, para. 27; and UNICEF input.

[27] UNICEF input.

[28] See *Atlas of Environmental Migration* (footnote 24 above), p. 90.

[29] See J. McAdam, "Climate Change Displacement and International Law: Complementary Protection Standards", (2011), pp. 12–14. Available at www.unhcr.org/protection/globalconsult/4dff16e99/19-climate-change-displacement-international-law-complementary-protection.html.

group or political opinion. Unsuccessful attempts by citizens of Kiribati and Tuvalu to claim refugee status in Australia and New Zealand illustrate the difficulties, under international refugee law, of claiming protection from climate change.[30]

25. The above-mentioned Convention may offer protection to those affected by climate change in a limited set of circumstances[31] where, inter alia: (a) a national authorities' denial of protection from the adverse effects of climate change amounts to persecution; (b) national authorities use the negative impacts of climate change to persecute particular groups or individuals; and (c) serious human rights violations or armed conflict triggered by climate change causes people to flee based on a well-founded fear of persecution. In those cases, protection is centred on action/inaction by national authorities that constitutes persecution on prohibited grounds rather than the adverse effects of climate change.[32]

26. At the regional level, the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa and the Cartagena Declaration on Refugees have adopted broader definitions of the term "refugee" that increase the possibility of refugee status and protections applying to persons displaced by climate change.[33] The Convention extends refugee status to persons who, owing to events seriously disturbing public order, are compelled to seek refuge outside their country of origin or nationality.[34] Similarly, the Declaration extends the definition to persons who have fled their country because their lives, safety or freedom have been threatened by "massive violation of human rights or circumstances which have seriously disturbed public order".[35]

2. Environmental law and policy

27. Environmental law, including climate change law, sometimes addresses human mobility and related protection needs. The Rio Declaration on Environment and Development outlines the foundational principles of international environmental law, including common but differentiated responsibility, the precautionary principle, cooperation, responsibility towards future generations, access to information, participation, access to justice and sustainable development. Those principles are reaffirmed in the 2030 Agenda for Sustainable Development, which sought to realize human rights for all persons. The 2030 Agenda calls for international cooperation to achieve sustainable development and includes specific goals on orderly, safe, regular and responsible migration as well as climate change.

28. Key environmental law principles are also reflected in legally binding multilateral environmental agreements, such as the United Nations Framework Convention on Climate Change and the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa. In recent years, the Conferences of the Parties to those Conventions have addressed human mobility.[36]

29. The Framework Convention, its Kyoto Protocol and the Paris Agreement under the Convention, call for States to act jointly and separately to mitigate climate change and adapt to its adverse effects, including the impacts of climate change on human health.

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[30] See Refugee Appeal No. 72189/2000 (New Zealand); Refugee Review Tribunal Case No. 0907346 (Australia); and *Ioane Teitiota v. The Chief Executive of the Ministry of Business, Innovation and Employment* (Supreme Court of New Zealand, 2013).

[31] See W. Kälin and N. Schrepfer, "Protecting People Crossing Borders in the Context of Climate Change: Normative Gaps and Possible Approaches", (2012), pp. 32–34. Available at www.unhcr.org/4f33f1729.pdf.

[32] Ibid. See also UNHCR, "Legal considerations on refugee protection for people fleeing conflict and famine affected countries" (2017). Available at www.refworld.org/docid/5906e0824.html.

[33] See B. Havard, "Seeking Protection: Recognition of Environmentally Displaced Persons under International Human Rights Law", in *Villanova Environmental Law Journal*, Vol. XVIII (2007), pp. 76–77; and J. Cooper, "Environmental Refugees: Meeting the requirements of the refugee definition", in *New York University Environmental Law Journal*, vol. 6 (2) (1998), p. 497.

[34] See Convention Governing the Specific Aspects of Refugee Problems in Africa, art. I. 2.

[35] See Cartagena Declaration on Refugees, art. III (3).

[36] See, for example, part two of the report of the Conference of the Parties on its thirteenth session, held in Ordos, China, from 6 to 16 September 2017 (ICCD/COP(13)/21/Add.1).

While the Convention does not explicitly address migration, the preamble to the Paris Agreement calls upon all States to respect, promote and consider the rights of migrants when taking climate action. The ongoing work of the Conference of the Parties to the Convention and its subsidiary bodies, including the Task Force on Displacement of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, provide a forum for discussing issues related to the protection of those displaced by the adverse effects of climate change. The Task Force and the Executive Committee of the Mechanism are mandated to develop recommendations for integrated approaches to avert, minimize and address displacement related to climate change.

30. Regional environmental agreements may also protect migrants affected by climate change. The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) recognizes the right of every person to live in an environment adequate to ensure their health and well-being and establishes legally binding obligations related to access to information, participation in decision-making and access to justice in environmental matters. In March 2018, a similar agreement was adopted by 24 Latin American and Caribbean States.[37]

3. Global compacts

31. The New York Declaration for Refugees and Migrants identifies climate change, disasters and environmental degradation as drivers of human movement that require cooperative, rights-based responses. It calls for preparation of two global compacts — on refugees and on safe, orderly and regular migration — to further its objectives, which include a framework for comprehensive international cooperation on human mobility including human rights protection. According to the Secretary-General, the compact on migration must protect human rights for all and both compacts must respond to the reality that climate change is likely to exacerbate economic, environmental and social pressures to migrate over the next few decades.[38] Current drafts of each compact have made explicit reference to environmental degradation, disaster or climate change. For example, the "zero draft plus" of the global compact on safe, orderly and regular migration[39] calls for the development of tailored migration schemes to facilitate migration as an adaptation strategy to slow-onset environmental degradation related to the adverse effects of climate change.

4. Other relevant law and policy frameworks

32. In rare circumstances, the Convention relating to the Status of Stateless Persons might protect people fleeing the adverse effects of climate change; however, it does not apply to or respond to the needs of most people fleeing the adverse effects of climate change.[40]

33. Although not legally binding, there are also many policy processes and instruments that address important aspects of human mobility in the context of climate change. The Sendai Framework for Disaster Risk Reduction aims to substantially reduce disaster risks, strengthen disaster risk governance and enhance disaster preparedness, particularly for vulnerable populations. The Framework explicitly addresses climate change and disaster displacement. It includes guiding principles that call for promoting and protecting all human rights and developing coherent policies across the climate change, disaster risk reduction and sustainable development agendas.

34. The International Organization for Migration (IOM), through the regular meetings of its governing bodies, offers a platform for State-led efforts to address environmental

[37] See https://negociacionp10.cepal.org/9/en/news/latin-america-and-caribbean-adopts-its-first-binding-regional-agreement-protect-rights-access.

[38] See A/72/643, paras. 1, and 51–52.

[39] Available at https://refugeesmigrants.un.org/sites/default/files/2018mar05_zerodraft.pdf.

[40] See S. Park, "Climate Change and the Risk of Statelessness: The Situation of Low-Lying Island States", (2011), p. 3, available at www.unhcr.org/4df9cb0c9.pdf. See also "Protecting People Crossing Borders" (footnote 32 above), pp. 32–34.

migration, including aspects of a human rights-based approach.[41] Environmental migration has also been discussed and addressed through State-led regional consultative processes on migration.[42] In the Americas, the Regional Conference on Migration has adopted a guide to effective practices for its member countries,[43] which articulates a rights-based approach to the protection of persons crossing borders because of disasters.

35. The Nansen Initiative, a State-led, multi-stakeholder, consultative process, specifically addressed cross-border displacement in the context of disasters and climate change. The Initiative's Protection Agenda,[44] endorsed by 109 States, calls for the integration of human rights-based approaches in disaster risk reduction, adaptation measures, and sustainable development efforts. The Agenda calls for managed human mobility, including the broadened application of humanitarian protection measures and the use of planned relocation as a last resort.

36. Although important, the above-mentioned instruments fail to provide comprehensive protection of persons crossing borders in the context of climate change. Therefore, it falls to international human rights law to provide protection and guide the development and interpretation of new and existing instruments.

B. Applying international human rights law to protect persons crossing borders in response to the adverse effects of climate change

37. In the context of climate change-related cross-border movement, international human rights law, norms and standards offer the most comprehensive, people-centred and flexible framework for the protection of all migrants in vulnerable situations, including those affected by climate change. All persons are rights-holders and all States have ratified at least one international human rights treaty.[45] Human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, impose obligations on all States to respect, protect and fulfil human rights for all without discrimination. Further, "human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change".

38. In its key messages on human rights and climate change,[46] OHCHR prescribed a rights-based approach to climate action. It called upon States to mitigate climate change and prevent its negative human rights impacts; to ensure all persons have the capacity and means to adapt to climate change; and to ensure accountability and access to remedies for human rights harms caused by climate change. In the specific context of human mobility, which can place people in precarious conditions, it is important to further elaborate on those human rights obligations.

39. If persons crossing borders because of the adverse effects of climate change fall outside the specific legal category of "refugee" and have no other access to safe, orderly or regular migration, it becomes especially critical to ensure that their human rights are respected, protected and fulfilled.[47] The Global Migration Group Working Group on Human Rights and Gender Equality, which is co-chaired by OHCHR, recently submitted to the Human Rights Council its Principles and practical guidance on the human rights

[41] See, for example, www.iom.int/jahia/webdav/shared/shared/mainsite/about_iom/en/council/94/MC_INF_288.pdf.

[42] See www.iom.int/inter-state-consultation-mechanisms-migration.

[43] Available at https://disasterdisplacement.org/wp-content/uploads/2016/11/PROTECTION-FOR-PERSONS-MOVING-IN-THE-CONTEXT-OF-DISASTERS.pdf.

[44] Available at https://nanseninitiative.org/wp-content/uploads/2015/02/PROTECTION-AGENDA-VOLUME-1.pdf.

[45] In total, 133 countries have ratified more than 10 such treaties. See OHCHR, Status of Ratification, available at http://indicators.ohchr.org/.

[46] Available at www.ohchr.org/Documents/Issues/ClimateChange/KeyMessages_on_HR_CC.pdf.

[47] See A/HRC/37/34, para. 8.

protection of migrants in vulnerable situations,[48] in which it articulates the human rights protections to which all migrants in vulnerable situations, including those affected by climate change, are entitled as well as their normative foundations.

40. In its Key Messages on Human Rights, Climate Change and Migration,[49] OHCHR further highlights the human rights obligations and responsibilities of States and other duty-bearers addressing climate change-related human mobility challenges.

41. To comply with those obligations, States should facilitate migration with dignity for all migrants, including those affected by climate change, and address their specific human rights protection needs. Protection needs include water and sanitation, adequate food and housing, and access to health care, social security, education and decent work. They also entail upholding the fundamental principle of non-refoulement and the prohibition of collective expulsion, as well as the rights to liberty, personal integrity and family unity; and ensuring the best interests of the child. States should put in place appropriate mechanisms to guarantee that all migrants who require human rights protection and are unable to return to their countries because of climate change are provided with an effective legal status.

42. States are obligated to protect against displacement because it threatens the effective enjoyment of a broad array of rights under the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. States should therefore address the underlying causes that force people to move by pursuing ambitious climate change mitigation in accordance with the objectives of the Paris Agreement. To further reduce the risk of climate change-related displacement, States should employ effective adaptation measures, including with respect to disasters, extreme weather events and slow-onset processes. Efforts to address the root causes of displacement in the context of climate change should seek to protect rights, strengthen social protection systems, reduce disaster risk and exposure and increase adaptive capacity.

43. Non-discrimination and equality are core human rights principles reflected in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and all human rights instruments, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination. By disproportionately affecting those already marginalized, climate change threatens States' commitments related to non-discrimination and equality. States, therefore, must account for the different needs, capacities and vulnerabilities of those individuals most affected by climate change.

44. Freedom of movement, including movement away from climate change-affected areas, is a fundamental right and may allow individuals and communities to avoid the adverse effects of climate change and improve resilience. The International Covenant on Civil and Political Rights guarantees the rights of all persons to leave any country, including their own, and to move freely and choose their place of residence within a country once lawfully present. Those rights should be protected and may only be limited if necessary to safeguard a State's national security, public order, public health or morals, or the rights or freedom of others.[50] Furthermore, the International Covenant on Civil and Political Rights provides that any migrant seeking to return to his or her own country must not be arbitrarily deprived of the right to do so.

45. Articles 6 and 7 of the International Covenant on Civil and Political Rights guarantee the rights to life and freedom from cruel, inhuman or degrading treatment or punishment. States must not return a migrant who may face these situations, or other

[48] A/HRC/37/34/Add.1.

[49] Available from www.ohchr.org/Documents/Issues/ClimateChange/Key_Messages_HR_CC_Migration.pdf.

[50] The Human Rights Committee has clarified that any restrictions must be consistent with the State's international human rights obligations. See Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant, para. 8.

serious human rights violations.[51] They should consider measures to admit persons from and/or refrain from returning persons to areas adversely affected by climate change. States are bound by the fundamental principle of non-refoulement to ensure appropriate protection for any persons subject to their jurisdiction or effective control. That means they should refrain from returning persons to an area where there is a high likelihood that climate change-related risks threaten human rights.

46. The International Covenant on Civil and Political Rights and other human rights instruments guarantee all persons the right to information and participation in public affairs. State actions and decisions related to human mobility and climate change should involve the meaningful and informed participation of the most affected persons. Decision-making should be transparent and empower affected persons. For decisions or actions that impact indigenous peoples' rights, States must obtain their free, prior and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples.

47. Planned relocation can respond to the predicted impacts of climate change by moving individuals and communities away from unsafe areas. However, it should be a measure of last resort.[52] In order to respect, protect and fulfil the right to housing under the International Covenant on Economic, Social and Cultural Rights, States must refrain from, and protect against, forced evictions by ensuring any relocation of persons is grounded in human rights. Planned relocation should also involve the meaningful and informed participation of all affected persons, including migrants and receiving communities and maintain their previous living standards.

48. Finally, the International Covenant on Civil and Political Rights and other human rights instruments require all persons to have access to justice, including effective remedies. States are required to provide effective mechanisms to prevent and redress human rights harms resulting from the adverse effects of climate change, and from climate change mitigation and adaptation. This is critical for migrants who are often unable to access justice due to the conditions they face before, during and after migration. States must be accountable for their contribution to human rights harms regardless of where they occur. Accountability should also include businesses and actors that have contributed to the causes of climate change or violated human rights in their mitigation and adaptation actions.

C. Mobilizing the means of implementation for climate change adaptation and mitigation

49. The preceding analysis demonstrates that climate change drives cross-border movement, that persons affected by climate change face unique human rights risks throughout their movement, and that international human rights law offers the most effective protection. Mobilizing the means of implementation for effective climate change adaptation and mitigation is also critical to prevent displacement and ensure human rights protection for persons on the move because of climate change.

50. The individual and collective mobilization of resources to address foreseeable human rights harms caused by climate change is, in and of itself, a human rights obligation.[53] International assistance for climate change mitigation and adaptation should be in addition to existing commitments and should be mobilized on the basis of equity and in accordance with the principle of common but differentiated responsibility. Pursuant to relevant human rights principles, climate assistance should be adequate, effective and transparent, should be administered through participatory, accountable and non-

[51] Human rights mechanisms have underlined that, under international human rights law, the prohibition of refoulement is absolute.

[52] See Brookings Institution, Georgetown University and UNHCR, "Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation" (2015). Available at www.refworld.org/docid/596f15284.html.

[53] The International Covenant on Economic, Social and Cultural Rights calls for States to act individually and collectively to mobilize and allocate the maximum available resources for the progressive realization of economic, social and cultural rights.

discriminatory processes, and should benefit those most in need, including persons on the move.

51. Read collectively, the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights, the United Nations Framework Convention on Climate Change, the Declaration on the Right to Development, and other instruments, including those related to international labour standards, reinforce that States have human rights obligations to cooperate and mobilize the necessary means of implementation to ensure the safety and dignity of all persons, including those crossing borders in response to the adverse effects of climate change. These efforts should respect basic principles of climate justice, including the commitments of parties to protect the rights of persons disproportionately affected by climate change and future generations.

52. Importantly, ensuring the means of implementation for climate change mitigation and adaptation to close protection gaps requires more than simply mobilizing financial resources. Technology, for example, is a critical means of implementation. Under the International Covenant on Economic, Social and Cultural Rights, everyone has the right to enjoy the benefits of science and its applications. Effective climate change mitigation and adaptation technologies should be developed and equitably distributed under the technology facilitation mechanism of the Paris Agreement, which specifically calls for support to be provided to developing countries.

53. In addition to calling upon developed countries to mobilize $100 billion per year in climate finance to address the needs of developing countries, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development also speaks of transparent methodologies for reporting climate finance; technology transfer to address climate change; capacity-building, including to improve access to climate finance; policy coherence throughout the different aspects of sustainable development; and improved data collection to inform evidence-based policies. The Action Agenda specifically calls for funding to address climate change and disaster resilience, an even split between adaptation and mitigation funding, and directing climate finance towards vulnerable countries in accordance with the principle of common but differentiated responsibility. It further emphasizes the importance of providing safe and fair channels for remittances, and calls for international cooperation to ensure safe, orderly and regular migration with full respect for human rights.

54. The 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, the Sendai Framework and the Paris Agreement are all interlinked and represent a considerable international commitment, with human rights at the core, to mobilize diverse means of implementation for climate change mitigation and adaptation; the promotion of safe, orderly and regular migration; disaster risk reduction; and sustainable development that leaves no one behind.

55. Because the International Covenant on Civil and Political Rights, the Declaration on the Right to Development and other human rights instruments guarantee all persons the right to free, active, meaningful and informed participation in public affairs, it is important that the means of implementation for climate change mitigation and adaptation measures are the result of informed and participatory decision-making processes. People are the agents of change who must be empowered to achieve effective climate action, including, when necessary, by taking decisions freely to move in conditions of safety and dignity. That empowerment requires transparent and inclusive institutions and processes, as well as accurate and accessible measurements of greenhouse gas emissions, climate change and its human rights impacts. Sufficient regular pathways for cross-border movement are a prerequisite. Participation in decision-making, as well as the monitoring, review and verification of climate change impacts and commitments, are critical in order to close protection gaps by ensuring the effective mobilization of means of implementation for climate change mitigation and adaptation. Integrating human rights, including the rights of migrants, in the guidelines for implementation of the Paris Agreement (currently under

negotiation) offers an opportunity to help ensure the effective mobilization of resources for climate change mitigation and adaption measures that protect persons on the move.[54]

56. Furthermore, businesses also have a role to play in mobilizing resources to achieve international objectives related to climate change mitigation and adaptation, and human mobility. For example, article 6 of the Paris Agreement calls upon parties to incentivize and facilitate the private sector's participation in climate change mitigation. In doing so, States should include adequate safeguards and take effective measures to protect human rights from business harms in line with their obligations under the Guiding Principles on Business and Human Rights. Businesses should participate responsibly in climate change mitigation and adaptation efforts with full respect for human rights.

IV. Illustrative good practices

57. The following analysis highlights some illustrative good practices in promoting a rights-based approach to human mobility challenges posed by climate change that were identified through stakeholder inputs and OHCHR research.

58. Collective efforts by United Nations agencies, States and other stakeholders are needed to address the complex intersection of human rights, human mobility and climate change. Part III of the present report contains a number of multi-stakeholder efforts to develop legal and policy frameworks that protect persons crossing borders in the context of climate change. The State-led Platform on Disaster Displacement[55] was established to follow up on the work of the Nansen Initiative and to implement its protection agenda. The Platform aims to strengthen the protection of people displaced across borders in the context of disasters, including those linked to the effects of climate change, and to prevent or reduce disaster displacement risks. Other multi-stakeholder efforts include, for example, the Framework for Resilient Development in the Pacific, which adopts a human rights-based approach and includes specific guidance related to disaster risk reduction and migration;[56] and the Global Knowledge Partnership on Migration and Development, which contributes to better understanding of the determinants of human movement.[57]

59. International reporting and communications processes under the Framework Convention, the Human Rights Council and the human rights treaty bodies can play an important role in the development, monitoring and review of national policies related to human rights, human mobility and climate change. For example, 33 out of 162 intended nationally determined contributions to the Framework Convention before the twenty-first Conference of the Parties referenced some form of mobility.[58] Unfortunately, research indicates that the number of States including references to human rights in their communications to the Framework Convention or to the adverse effects of climate change during their Human Rights Council universal periodic review are similarly limited.[59] Climate change and human mobility have also come up in the work of human rights treaty

[54] For more information on integrating human rights in the guidelines, see www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/UNFCCC.aspx.

[55] See https://disasterdisplacement.org/.

[56] See Pacific Community, Secretariat of the Pacific Regional Environment Programme, Pacific Islands Forum Secretariat, United Nations Development Programme, United Nations Office for Disaster Risk Reduction and the University of the South Pacific, *Framework for Resilient Development in the Pacific: An Integrated Approach to Address Climate Change and Disaster Risk Management, 2017–2030*, (Suva, 2016). Available at https://pacificclimatechange.net/sites/default/files/documents/FRDP_2016_Resilient_Dev_pacific.pdf.

[57] See www.knomad.org/.

[58] See IOM, "Migration in the Intended Nationally Determined Contributions and Nationally Determined Contributions" (2016), available at www.environmentalmigration.iom.int/sites/default/files/MECC%20Infosheet%20INDCs%20and%20NDCs_14Sep2016_for%20web.pdf.

[59] See Mary Robinson Foundation, "Climate Justice: Incorporating Human Rights into Climate Action" (May 2016), available at www.mrfcj.org/wp-content/uploads/2016/05/Incorporating-Human-Rights-into-Climate-Action-Version-2-May-2016.pdf.

bodies.[60] In its general recommendation No. 37, the Committee for the Elimination of Discrimination against Women offers clear guidance on measures needed to protect the rights of women migrants affected by climate change. A consistent approach to climate change-related human mobility in treaty-body review processes and communications on the Framework Convention could contribute to more effective monitoring of impacts, improved responses and further development of the relevant legal obligations of States.

60. At the national level, some States have put in place mechanisms to grant protection to people affected by environmentally induced disasters.[61] The Nansen Initiative identified more than 50 States that had used their discretion in migration matters and instruments provided for by their national legislation to admit persons affected by disasters.[62] Switzerland, for example, takes account of environmental and socioeconomic situations to extend protection to persons who would be endangered by a return to their country of origin;[63] and the Plurinational State of Bolivia, in its Law No. 370 of 2013, has explicitly referenced climate change migration and the need to protect those migrating in its national legislation. Ireland highlighted that its financial support for disaster risk reduction in climate vulnerable States as well as other forms of adaptation support to strengthen the resilience of poor and vulnerable households targeted the underlying causes of climate change-related movement.[64]

61. UNICEF emphasized its support for national child-focused climate change mitigation strategies, and national climate change and disaster risk reduction offices.[65] Several other inputs highlighted policies and actions related to climate change mitigation and adaptation, and disaster risk reduction. Cuba described its efforts at disaster risk reduction through planned relocation and ecosystem restoration.[66] While such efforts may not explicitly address human mobility, they can reduce the risk of displacement.

62. In several countries, migration has been promoted as a form of climate change adaption.[67] In Kenya, the National Climate Change Action Plan, for example, calls for research on migration as a potential coping mechanism for climate change. Countries of destination must also play a role. Reaching bilateral migration agreements with climate vulnerable countries can help facilitate safe, orderly and regular movement provided such agreements are non-discriminatory and comply with international human rights obligations. Italy, for example, has concluded several bilateral agreements that could potentially facilitate human mobility as a climate change adaptation strategy.[68] Similar agreements exist between a number of small island States in the Pacific and countries such as Australia, New Zealand and the United States of America.

63. The UNHCR Guidelines on Temporary Protection or Stay Arrangements[69] may apply in disaster and climate change contexts, and UNHCR offers general guidance to States on the use of humanitarian visas and temporary protection arrangements to protect those displaced across borders, including by climate change and disasters.[70] In support of

[60] See Center for International Environmental Law and Global Initiative for Economic, Social and Cultural Rights, "Synthesis Note on the Concluding Observations and Recommendations on Climate Change Adopted by UN Human Rights Treaty Bodies", available at http://www.ciel.org/wp-content/uploads/2018/01/HRTBs-synthesis-report.pdf.

[61] Input from the University of Bern and International-Lawyers.org.

[62] See Nansen Initiative, *Global Consultation Conference Report* (Geneva 2015), p. 16. Available at www.nanseninitiative.org/wp-content/uploads/2015/02/GLOBAL-CONSULTATION-REPORT.pdf.

[63] Switzerland input.

[64] Ireland input.

[65] UNICEF input.

[66] Cuba input; see also Christian Asse input, describing the importance of traditional knowledge, ecosystem restoration and preserving traditional livelihoods for effective climate action.

[67] Input from the University of Bern and International-Lawyers.org.

[68] Ibid.

[69] Available at www.refworld.org/docid/52fba2404.html.

[70] UNHCR input. See also UNHCR, "Legal considerations" (footnote 33 above).

the adoption of national and regional protection measures, UNHCR has compiled good practices from countries in Latin America that may apply in disaster contexts.[71]

64. IOM supports a human rights-based approach to human mobility in relation to climate change through its policy, research, training and operational activities. It has produced a number of tools related to human rights, climate change and migration, including the environmental migration portal which serves as a knowledge platform.[72] Those and other efforts raise awareness of the relationship between migration and climate change to inform policy choices.[73] IOM regional projects also offer direct support, for example, to improve the capacity of Pacific Island States to manage the impacts of climate change on migration[74] and to promote sustainable land management in migration-prone areas of West Africa through innovative financing mechanisms.[75]

65. OHCHR has compiled and regularly updates a list of promising practices related to migration in Global Migration Group's Principles and practical guidance on the human rights protection of migrants in vulnerable situations.[76] These include, for example, the work of the Food and Agriculture Organization of the United Nations to address the root causes of migration and build conflict-resilience by promoting recovery of local agricultural and food economies, including through climate change adaptation, which permits affected people to remain on their land when it is safe for them to do so.

V. Recommendations

66. **The research performed by OHCHR, summarized in the preceding analysis, provides a sound basis for a number of concrete recommendations.[77] Governments and other relevant stakeholders should:**

(a) **Take ambitious action to mitigate climate change in accordance with the Paris Agreement in order to prevent its impacts from worsening and reduce its role as a driver of human mobility;**

(b) **Ensure respect, fulfilment, promotion and protection of all human rights for persons crossing borders in the context of climate change;**

(c) **Promote and expand safe, regular, dignified and accessible pathways for human mobility that respect and protect the rights of persons affected by climate change, including through specific protection mechanisms;**

(d) **Refrain from returning migrants to territories affected by climate change that can no longer sustain them and steadfastly uphold the fundamental principle of non-refoulement and other international human rights law obligations, to provide protection for persons who are unable to return to their homes as a result of climate change;**

(e) **Affirm the relationship between climate change, human rights and human mobility, including through the recognition of climate change as a driver of human movement and a possible ground for admission in the global compacts;**

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[71] See www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/Proteccion/Buenas_Practicas/9234.

[72] See www.environmentalmigration.iom.int/.

[73] See www.environmentalmigration.iom.int/migration-environment-and-climate-change-evidence-policy-meclep.

[74] See www.environmentalmigration.iom.int/projects/enhancing-capacity-pacific-island-countries-manage-impacts-climate-change-migration-pccm.

[75] See www.environmentalmigration.iom.int/projects/west-africa-promoting-sustainable-land-management-migration-prone-areas-through-innovative.

[76] A/HRC/37/34/Add.1. See also www.ohchr.org/EN/Issues/Migration/Pages/VulnerableSituations.aspx.

[77] See also www.ohchr.org/EN/Issues/HRAndClimateChange/Pages/HRClimateChangeAndMigration.aspx.

(f) Address the impacts of climate change on the enjoyment of all human rights through effective, scaled-up adaptation measures that benefit the most vulnerable, facilitate safe and voluntary movement, and minimize forced movement, including through strengthened social protection systems;

(g) Mobilize all necessary means of implementation for effective climate change mitigation and adaptation measures to address human rights protection gaps for persons adversely affected by climate change;

(h) Facilitate the integration of climate change-related migrants in host communities, the regularization of their legal status and their access to labour markets;

(i) Ensure the meaningful, effective and informed participation of all persons, and especially women, in decision-making processes related to climate change and human mobility. For persons and communities displaced from their traditional livelihoods and territories due to climate change, empower them to make decisions about their futures and, to the greatest extent possible, ensure their continued access to traditional lands, resources and livelihoods;

(j) Adequately inform people about the existing and potential adverse effects of climate change to promote informed decision-making, support their right to plan and manage their own movement and facilitate their access to justice;

(k) Address data gaps through collection of disaggregated data related to the drivers of human movement; human rights impact assessments of climate change and climate actions; and community mobilization to measure the adverse effects of climate change and generate knowledge;

(l) Strengthen the role of regional bodies, conventions and economic communities in preventing, minimizing and addressing climate change-related human mobility. For example, in the absence of an international obligation to admit people affected by climate change, promote regional protection frameworks;

(m) Enhanced monitoring, review and technical support by human rights mechanisms on the issue of climate change-related cross-border movement, including by engaging the Human Rights Council, its special procedures mechanisms and the human rights treaty bodies;

(n) Commit to integrating human rights and human mobility, as well as climate change or the adverse effects of climate change, in relevant national reporting to the United Nations Framework Convention on Climate Change and to United Nations human rights mechanisms, in particular the universal periodic review; and ensure that the Task Force on Displacement of the Warsaw International Mechanism employs a rights-based approach to human mobility;

(o) Operationalize the Global Migration Group's Principles and practical guidance on the human rights protection of migrants in vulnerable situations.